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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/513,998	02/23/2000	Richard J. Helferich	19504-028	6034

6449 7590 02/20/2004

ROTHWELL, FIGG, ERNST & MANBECK, P.C.
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SUITE 800
WASHINGTON, DC 20005

EXAMINER

TRINH, TAN H

ART UNIT	PAPER NUMBER
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2684

14

DATE MAILED: 02/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/513,998

Applicant(s)

HELPERICH, RICHARD J.

Examiner

TAN TRINH

Art Unit

2684

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 February 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 23-68 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 23-68 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 2, 8, 11, 12.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement filed 2-23-2000, 4-3-2002, 1-3-2003 and 3-28-2003 has been received and placed of record in the file.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 23-68 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-21 of U.S. Patent No. 6,097,941. Although the conflicting claims are not identical, they are not patentably distinct from each other because:

Claim 23 is disclosed by claim 1 of U.S. Patent No. 6,097,941.
Claim 24 is disclosed by claim 2 of U.S. Patent No. 6,097,941.
Claim 25 is disclosed by claim 3 of U.S. Patent No. 6,097,941.
Claim 26 is disclosed by claim 5 of U.S. Patent No. 6,097,941.
Claim 27 is disclosed by claim 6 of U.S. Patent No. 6,097,941.
Claim 28 is disclosed by claim 7 of U.S. Patent No. 6,097,941.
Claim 29 is disclosed by claim 8 of U.S. Patent No. 6,097,941.
Claim 30 is disclosed by claim 9 of U.S. Patent No. 6,097,941.
Claim 31 is disclosed by claim 11 of U.S. Patent No. 6,097,941.
Claim 32 is disclosed by claim 13 of U.S. Patent No. 6,097,941.
Claim 33 is disclosed by claim 14 of U.S. Patent No. 6,097,941.
Claim 34 is disclosed by claim 15 of U.S. Patent No. 6,097,941.
Claim 35 is disclosed by claim 17 of U.S. Patent No. 6,097,941.
Claim 36 is disclosed by claim 18 of U.S. Patent No. 6,097,941.

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Claim 37 is disclosed by claim 16 of U.S. Patent No. 6,097,941.
Claim 38 is disclosed by claim 19 of U.S. Patent No. 6,097,941.
Claim 39 is disclosed by claim 13 of U.S. Patent No. 6,097,941.
Claim 40 is disclosed by claims 18, 20 and 21 of U.S. Patent No. 6,097,941.
Claim 43 is disclosed by claims 3,4 and 17 of U.S. Patent No. 6,097,941.
Claim 46 is disclosed by claims 13, 18 of U.S. Patent No. 6,097,941.
Claim 49 is disclosed by claim 17 of U.S. Patent No. 6,097,941.

The claims 1-21 of U.S. Patent No. 6, 097,941, encompassed the claims 23--68 of present invention.

Conclusion

4. **Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks
Washington, D.C. 20231

or faxed to:

(703) 872-9314, (for Technology Center 2600 only)

*Hand-delivered responses should be brought to Crystal Park II,
2121 Crystal Drive, Arlington, VA., Sixth Floor (Receptionist).*

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tan Trinh whose telephone number is (703) 305-5622. The examiner can normally be reached on Monday-Friday from 9:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nay Maung, can be reached at (703) 308-7745.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the **Technology Center 2600 Customer Service Office** whose telephone number is **(703) 306-0377**.

Tan H. Trinh
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Feb. 11, 2004

Tan H. Trinh
Primary Examiner.